STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JIMMY LEE JONES, JR.,

Defendant-Appellant.

UNPUBLISHED
January 14, 2003

No. 232864
Kalamazoo Circuit Court
LC No. 00-000617-FC

Before: Meter, P.J., and Neff and Donofrio, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of assault with intent to commit murder, MCL 750.83, first-degree home invasion, MCL 750.110a(2), and aggravated stalking, MCL 750.411i. He was sentenced as a fourth habitual offender, MCL 769.12, to concurrent prison terms of twenty to forty years for the assault conviction, ten to twenty years for the first-degree home invasion conviction, and five to ten years for the aggravated stalking conviction. He appeals as of right. We affirm.

Defendant's convictions arose from an incident on May 17, 2000, when he entered the home of his wife and beat her about the head and neck. On appeal, defendant first argues that the evidence was insufficient to support his conviction for assault with intent to commit murder. When reviewing the sufficiency of the evidence, the reviewing court "must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt." *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997). "Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of a crime." *People v Truong (After Remand)*, 218 Mich App 325, 337; 553 NW2d 692 (1996), quoting *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993). In determining if the evidence is sufficient, all conflicts regarding the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). This Court will not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses. *Id.*

The elements of assault with intent to commit murder are: "(1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder." *Hoffman, supra*, 225 Mich App 111. Here, defendant argues that there was insufficient evidence of his intent to murder. We disagree. The element of intent may be proved by inference from any facts in

evidence. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). "Because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient." *Id.*

The evidence indicated that defendant threatened to kill the victim two days before the assault. Also, before the assault on May 17, 2000, the victim's telephone lines were disabled. When defendant broke open the front door of the victim's house, he informed her that he was there to kill her. He thereafter tried to push her into her bedroom, which had a lock on the door. He was unable to do so. However, he repeatedly punched her in the face. After the victim managed to leave the house, defendant followed her and continued the assault, kicking and stomping on her head and face. He stopped for a short time when employees from Root Spring Scraper yelled at him. He then resumed the assault, which ended only after a neighbor pulled defendant off of the victim, enabling the victim to escape to safety. While the victim did not suffer serious injury, medical testimony established that the head and neck are the most vulnerable areas of the body and that a pounding assault to those areas could cause death. Viewing the evidence of defendant's statements and conduct in a light most favorable to the prosecution, a rational trier of fact could determine that the element of intent to murder was proved beyond a reasonable doubt. See, e.g., *McRunels, supra* 237 Mich App 181-182.

Defendant next argues that the evidence was insufficient to support his conviction for first-degree home invasion. Again, we disagree. The plain language of MCL 750.110a(2) sets forth the following elements: (1) that the defendant broke and entered into the dwelling or entered the dwelling without permission; (2) that when the defendant did so, he either intended to commit a felony, larceny or assault or actually committed a felony, larceny or assault while entering, exiting or present in the dwelling; and (3) that when the defendant entered, was present in, or was leaving the dwelling, he was armed with a dangerous weapon or another person was lawfully in the dwelling. The term "without permission" is defined as "without having obtained permission to enter from the owner or lessee of the dwelling or from any other person lawfully in possession or control of the dwelling." MCL 750.110a(1)(c). Further, "any amount of force used to open a door or window to enter the building, no matter how slight, is sufficient to constitute a breaking." *People v Toole*, 227 Mich App 656, 659; 576 NW2d 441 (1998).

The victim testified that defendant did not have permission to enter the home. In addition, there was evidence that defendant was aware of an existing personal protection order (PPO), because he was arrested for violating the PPO on May 15, 2000. A person has no right to enter his home in violation of a restraining order. *People v Pohl*, 202 Mich App 203, 205; 507 NW2d 819 (1993). Further, there was evidence that defendant used force to enter the home. The victim testified that she heard two loud bangs at the front door. When she turned, she saw defendant in the house. The front door, which was previously locked, was wide open. There was also damage to the door, the lock, and the wall adjacent to the door frame, that was not present before the two loud bangs. Viewed most favorably to the prosecution, the evidence was sufficient to enable a rational trier of fact to conclude beyond a reasonable doubt that defendant not only entered without permission, but that he committed a breaking and entering.

The evidence also supported an inference that defendant entered the dwelling with the intent to commit a felony assault and actually committed an assault after entering. When defendant entered the house, he stated that he was there to kill her. He then punched her in the face several times before she managed to exit the dwelling. Additionally, while there was no evidence that defendant was armed with a weapon, MCL 750.110a(2) provides that first-degree

home invasion occurs if the person is *either* armed with a dangerous weapon *or* if "[a]nother person is lawfully present in the dwelling." There is no dispute that the victim and her children were lawfully present in the dwelling when defendant entered.

Defendant next argues that his multiple felony prosecutions violated the double jeopardy protections against multiple punishments and successive prosecutions for the same offense. He argues that because he was previously convicted of criminal contempt for violating the PPO, his subsequent prosecution for assault with intent to murder, first-degree home invasion, and aggravated stalking was precluded. We review this issue de novo because it presents a question of law. *People v Rodriquez,* 251 Mich App 10, 17; 650 NW2d 96 (2002).

"The double jeopardy guarantee protects against multiple punishments, or successive prosecutions, for the same offense." *Rodriquez, supra,* 251 Mich App 16-17. Neither guarantee was violated in this case. With respect to multiple punishments, the double jeopardy protection is not a limitation on the Legislature's power to fix punishments. *People v Denio,* 454 Mich 691, 709; 564 NW2d 13 (1997). "Thus, if the Legislature desires, it may specifically authorize penalties for what would otherwise be the 'same offense.'" *Id.,* quoting *People v Sturgis*, 427 Mich 392, 403; 397 NW2d 783 (1986); see also *People v Dillard,* 246 Mich App 163, 166; 631 NW2d 755 (2001) (noting that where the Legislature specifically authorizes cumulative punishment under two statutes, there is no double jeopardy violation).

The Legislature has specifically authorized cumulative punishment for both a PPO violation and aggravated stalking, MCL 750.411i(6). *People v Coones,* 216 Mich App 721, 727-728; 550 NW2d 600 (1996). The Legislature has also authorized cumulative punishment for PPO violations and first-degree home invasion. Both MCL 600.2950(23) and MCL 600.2950a(20) provide that the penalty for criminal contempt for refusing or failing to comply with a PPO may be imposed in addition to other penalties that may be imposed for other criminal offenses arising from the same conduct. The first-degree home invasion statute similarly provides that "[i]mposition of a penalty under this section does not bar imposition of a penalty under any other applicable law." MCL 750.110a(9). Finally, while the assault with intent to commit murder statute, MCL 750.83, does not specifically express an intent to authorize cumulative punishment, "[s]tatutes prohibiting conduct that is violative of distinct social norms can generally be viewed as separate and amenable to permitting multiple punishments." *People v Lueth,* ___ Mich App ___; ___ NW2d ___ (2002) (citation and internal quotation omitted). The PPO violation resulted in a conviction for criminal contempt. "[T]he primary purpose of the contempt power is to preserve the effectiveness and sustain the power of the courts." *In re Contempt of Auto Club Ins Ass'n,* 243 Mich App 697, 708; 624 NW2d 443 (2000). Contempt is a crime against the court while the underlying criminal offense is a crime against the state. *People v McCartney (On Remand),* 141 Mich App 591, 596; 367 NW2d 865 (1985). Because the assault with intent to commit murder statute, MCL 750.83, and the statutes punishing PPO violations prohibit conduct involving different social norms, we find the crimes are amenable to multiple punishment. The double jeopardy guarantee against multiple punishments for the same offense was not violated in this case.

The double jeopardy guarantee against successive prosecutions was also not violated. There are different standards under the United States Constitution's double jeopardy provision, US Const, Am V, and Michigan's double jeopardy provision, Const 1963, art 1, § 15. Under the Fifth Amendment, "double jeopardy bars reprosecution where the elements of the subsequent

crime charged are identical to the elements of the original crime charged." *People v Setzler*, 210 Mich App 138, 139; 533 NW2d 18 (1995). Contrary to defendant's argument on appeal, the elements of the charge of criminal contempt for violating the PPO are not the same as those for the felony crimes of assault with intent to murder and first-degree home invasion. Specifically, in order to obtain a criminal contempt conviction, the prosecutor was required to prove that defendant was served with the PPO. This is not an element of either assault with intent to commit murder or first-degree home invasion. Moreover, to prove the PPO violation, the prosecutor was not required to prove that defendant intended to commit murder. Proof of that element, however, was necessary to obtain a conviction for assault with intent to commit murder. Further, to obtain a conviction for first-degree home invasion, the prosecutor was required to prove that defendant entered the victim's house with the intent to commit a felony or that he committed a felony or assault while in the house and that he was in the house without permission or because he committed a breaking and entering to get into the house. We find there was no federal double jeopardy violation because the elements of the subsequently charged crimes were not identical to the elements of the original charge of criminal contempt for violating the PPO.

Similarly, Michigan's double jeopardy guarantee against successive prosecution was not violated by the felony prosecutions. Michigan adheres to the "same transaction" test when determining whether two offenses are the "same offense" for purposes of the double jeopardy protection against successive prosecutions. *Rodriquez, supra,* 251 Mich App 16-17. Where all of the offenses at issue do not require a specific criminal intent, the "same transaction" test focuses on a review of whether the offenses are part of the same criminal episode *and involve laws intended to prevent similar harms or evils. Id.* at 17, n 1.

Criminal contempt for violating a PPO is not a specific intent crime.

> Specific intent is defined as a particular criminal intent beyond the act done, whereas general intent is merely the intent to perform the physical act itself. . . . To determine if a criminal statute requires specific intent, this Court looks to the mental state set forth in the statute. . . . Words typically found in specific intent statutes include "knowingly," "willfully," "purposely," and "intentionally." [*People v Disimone,* 251 Mich App 605, 610-611; 650 NW2d 436 (2002) (citations omitted).]

Neither MCL 600.2950 nor MCL 600.2950a require a finding of specific intent.

There is no doubt that the PPO violation and the felony charges on which defendant was subsequently prosecuted arose from the same criminal episode. However, as previously discussed, the PPO offense subjected defendant to the criminal contempt powers of the court. Punishment for contempt serves a different purpose than punishment for the underlying crime. *McCartney, supra,* 141 Mich App 596. The primary purpose of the contempt power is to prevent harm to the effectiveness and power of the courts. *Contempt of Auto Club Ins Ass'n, supra,* 243 Mich App 708. The underlying criminal statutes, which formed the basis for defendant's successive prosecution, punish the defendant for his criminal actions. See *People v Szpara,* 196 Mich App 270, 272-273; 492 NW2d 804 (1992). There was no double jeopardy violation because the statutes at issue were not intended to prevent similar harms or evils.

Defendant next argues that his felony prosecutions were barred by the doctrine of collateral estoppel. We disagree.

> Collateral estoppel precludes relitigation of an issue in a subsequent, different cause of action between the same parties where the prior proceeding culminated in a valid, final judgment and the issue was (1) actually litigated, and (2) necessarily determined. [*People v Johnson*, 191 Mich App 222, 224; 477 NW2d 426 (1991) (quotation omitted).]

At the criminal contempt hearing, the trial court determined that defendant violated the PPO by telephoning the victim, coming onto her property, and by assaulting, beating and wounding the victim. The elements of the crimes of first-degree home invasion, aggravated stalking, and assault with intent to murder were neither litigated nor necessarily determined by the trial court at the contempt hearing. Thus, the doctrine of collateral estoppel did not bar successive prosecution on those offenses.

Finally, defendant argues that the court did not have jurisdiction to hear the felony charges. Defendant's argument is confusing and based on a misunderstanding of the proceedings. Both the criminal contempt hearing and the jury trial occurred in circuit court. Thus, defendant's argument that the district court did not have proper subject matter jurisdiction is misplaced. We note that the circuit court is a court of general jurisdiction, having original jurisdiction over *all* matters not prohibited by law. *People v Goecke*, 457 Mich 442, 458; 579 NW2d 868 (1998) (emphasis added). "Subject matter jurisdiction is presumed unless expressly denied by constitution or statute." *Id.* The circuit court in this case had jurisdiction over the contempt proceeding and defendant's jury trial on the felony charges.

Affirmed.

/s/ Patrick M. Meter
/s/ Janet T. Neff
/s/ Pat M. Donofrio